

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Brandon Keller,

Petitioner,

-vs-

Chad Pringle, Warden,

Respondent.

Case No. 3:15-cv-107

**ORDER ADOPTING REPORT AND
RECOMMENDATIONS**

On June 27, 2016, the undersigned received a Report and Recommendation from the Honorable Alice R. Senechal, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending that respondent's motion to dismiss be granted and the petition for habeas relief be dismissed with prejudice.¹ Keller timely filed an objection to the Report and Recommendation, in which he did not specifically state the nature of his objection but expressed his intent to appeal and requested a certificate of appealability.²

The court has reviewed the Report and Recommendation, the entire file, and the applicable case law. The court finds that the magistrate judge's analysis that Keller's petition is time-barred and that equitable tolling does not apply is correct. In light of the extremely deferential standard of review that this court is obligated to give to state courts, the court finds that Keller's claims challenging the application of state statute of limitations are not cognizable in a federal habeas petition. The court also agrees that his other claims are not cognizable.

For the foregoing reasons, the court **ADOPTS** the Report and Recommendation its

¹ Doc. #14.

² Doc. #15.

entirety. For the reasons set forth therein, the respondent's motion to dismiss³ is **GRANTED**. Keller's petition⁴ is **DISMISSED** with prejudice. Judgment shall be entered dismissing the petition but noting the court has issued a certificate of appealability.

IT IS ORDERED that Keller's objection filed on July 13, 2016⁵, be construed as a Notice of Appeal, and this case be forwarded to the Court of Appeals for consideration.

CERTIFICATE OF APPEALABILITY

Based on the record, the court finds that Keller has made a "substantial showing of the denial of a constitutional right" in which his petition is deserving of further proceedings. Therefore, the court **GRANTS** his request for a certificate of appealability as to all claims raised in his petition. The court further **GRANTS** leave to proceed *in forma pauperis* because an appeal would not be frivolous.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 21st day of July, 2016.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court

³ Doc. #7.

⁴ Doc. #1.

⁵ Doc. #15.